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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942.

No. 492

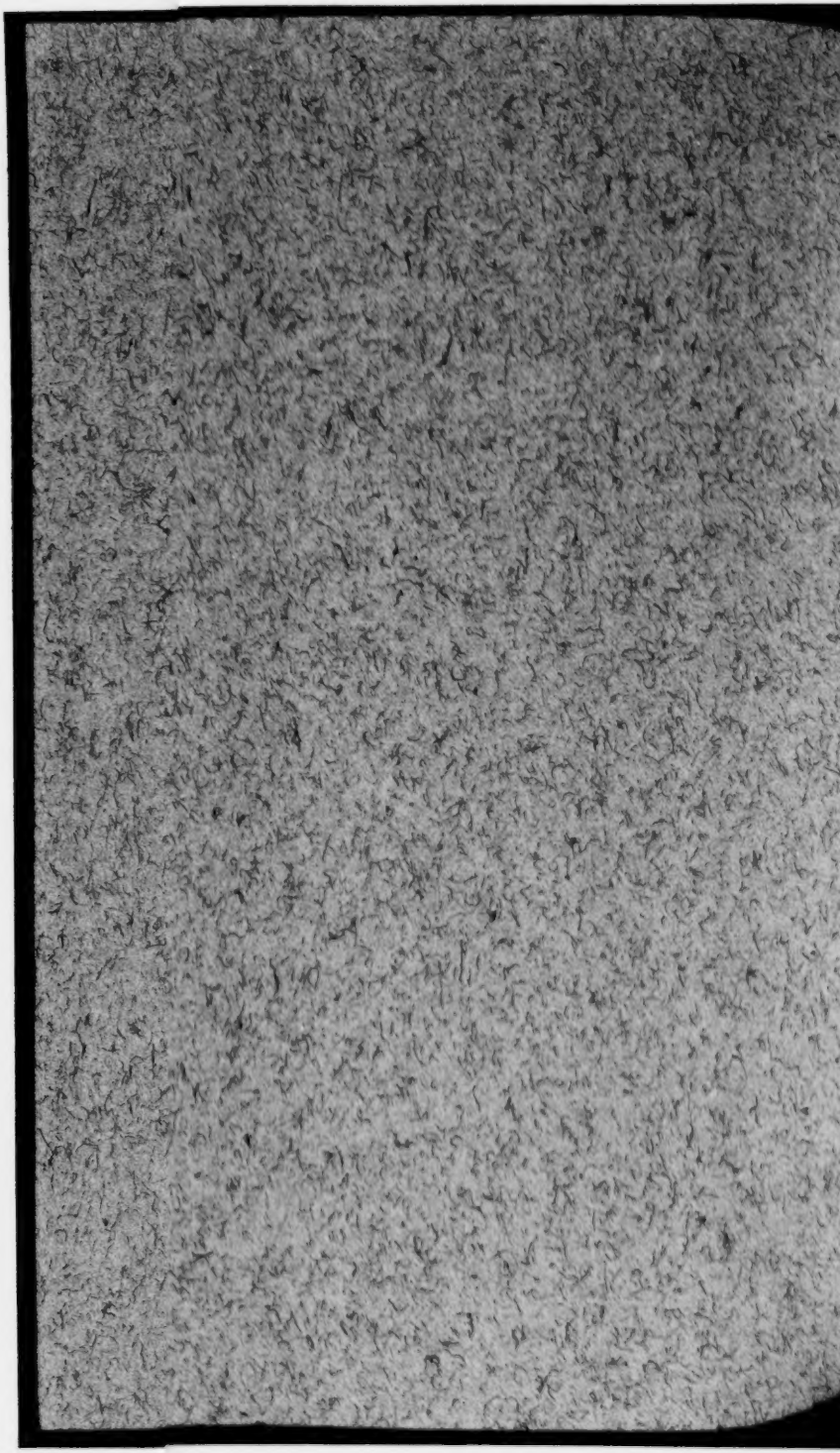
ARTHUR GREENWOOD, ET ALS.,
Petitioners,

vs.

HOTEL & RESTAURANT EMPLOYEES INTERNATIONAL ALLIANCE AND BARTENDERS INTERNATIONAL LEAGUE OF AMERICA, ET ALS.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA AND BRIEF IN SUPPORT OF THE PETITION.

HORACE C. WILKINSON,
Attorney for Petitioners.



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HOTEL & RESTAURANT EMPLOYEES INTERNATIONAL ALLIANCE AND BARTENDERS INTERNATIONAL LEAGUE OF AMERICA, ET ALS.,
Respondents

PETITION FOR WRIT OF CERTIORARI

To the Honorable Justices of the Supreme Court of the United States:

Your petitioners, Arthur Greenwood, Spiro Greenwood and Harry Greenwood, partners, doing business under the name of Greenwood Cafe, respectfully petition for a writ of certiorari to review a decision of the Supreme Court of Alabama, reported under the title of Hotel and Restaurant Employees International Alliance and Bartenders International League of America, et al., vs. Arthur

Greenwood, et als. (30 So. (2d) 696, Advance Sheets), rendered on April 24, 1947, application for rehearing denied by the Supreme Court of Alabama on June 12, 1947. Said decision reversed and rendered a decree of the Circuit Court of Jefferson County, Alabama, sitting in equity, in which the respondents were ordered to call off a strike against the Greenwood Cafe and enjoined from picketing the Cafe until the proprietors were given a reasonable opportunity to consider the demands made on them and to obtain the advice of counsel thereon and to conduct negotiations with the respondents.

The trial court also awarded the petitioners a judgment for $15,000.00 to compensate them for the actual damage sustained as a proximate consequence of the wrongful and unlawful strike and wrongful and unlawful picketing.

Summary Statement of the Matter Involved

Petitioners operate, and have operated, the Greenwood Cafe in Birmingham, Alabama, since 1911. During the 35 years they have been in business they have enjoyed friendly relations with labor and at different times have had four contracts with unions (R. 198). They allowed different unions to hold union meetings in their place of business when the unions were unable to provide a meeting place for themselves (R. 166-200). A union employee testified that in the four years she had been employed at the Greenwood Cafe not a single word of criticism of any union came from the Greenwoods, nor was there any effort on the part of any of them to interfere with any union activity or to prevent any employee from joining a union (R. 116). No one challenged her statement, although she was called as a hostile witness and was out on strike when she testified.

The Hotel and Restaurant Employees Local No. 454 had degenerated into "a racketeering organization"—accord-

ing to the testimony of its International Representative, Carl Hacker, and according to his testimony, he was sent into Birmingham to clean up "a racketeering mess" (R. 349).

On Monday, September 2, 1946, before the Greenwoods were contacted by any of the Respondents, Hacker had a number of large placards printed, in red type, reading:

> "Greenwood Employees on Strike For Higher Wages and Union Recognition. Hotel & Restaurant Employees International Alliance and Bartenders International League of America, Local 454 A. F. L." (R. 352).

Two days after the red placards were printed, Hacker and George Hardwick, representing the International and the Local No. 454, presented a proposed contract relating to wages, hours and working conditions of the employees in the cafe to Spiro Greenwood with a request that it be signed or an answer returned by the following Friday, September 6th (R. 340).

Hacker stated to Spiro Greenwood, when the contract was presented,

> "that possibly there were several paragraphs that should not be there but these were open for discussion" (R. —).

The Supreme Court of Alabama held the proposed contract was presented as a basis for negotiation.

Hacker stated that he was not a lawyer but he drafted the proposed contract (R. 138). Spiro Greenwood replied that he did not know much about law and that he and his partners wanted the advice of counsel before discussing the proposed contract (R. 139).

The Greenwood Cafe at that time was under O.P.A. regulations, and the proposed contract would have added some two hundred dollars per week to the cost of operating the cafe (R. 170-200).

Hacker and Hardwick left stating they would return the following Friday for an answer (R. 139).

The Greenwoods promptly contacted their counsel and asked his advice about the contract. Their lawyer was engaged in a hearing in the U. S. District Court at that time, which prevented him from giving the contract immediate consideration. On Thursday he informed the Greenwoods that he was obliged to attend a meeting of the Alabama Bar Association in Mobile, Alabama, on Friday, and did not expect to return until Saturday, and would give them an opinion on the contract on Monday. He asked them to arrange a conference with Hacker and Hardwick for Monday, September 9, 1947 (R. 164-139).

When Hacker and Hardwick returned to the cafe on Friday morning, September 6, 1946, about 11 a.m. they were informed that the Greenwoods had been unable to obtain the advice or opinion of their counsel, for the reasons stated. They were requested to meet the Greenwoods and their lawyer in conference on Monday following, so they could work out a contract. Hacker and Hardwick were informed at that time that the Greenwoods were ready to negotiate a contract as soon as their attorney could explain the legal effect of the proposed contract to them and that if any differences arose between the union and the Greenwoods that the parties could not reconcile that the Greenwoods were agreeable to submitting those differences to arbitration so that a contract was assured, either by negotiation or arbitration or a combination of both (R. 139, 207).

The respondents rejected that proposal and within a few minutes thereafter the employees were called out on a strike,

a picket line established. The number of pickets varied from four to six, all wearing the red placards Hacker caused to be printed the preceding Monday (R. 205-212).

Following the establishment of the picket line petitioners' service of supply was cut off. Bread and beer dealers, packing houses, the linen supply house and soft drink manufacturers were unable to supply the cafe because the employees of those establishments would not cross the picket line (R. 194, 216-18). Pickets congregated in the entrance to the cafe and stopped customers and talked to them and warned them not to enter the cafe. They completely blocked the main entrance at times. They were telling everybody, "Don't go in there; we are on a strike," and directed them to near-by restaurants (R. 94-126-212).

Customers and would-be customers were virtually required to run the gantlet of most uncomfortable publicity, aggressive importunity and fear of injurious consequences. Violence could not have been more effective (R. 213).

The Supreme Court of Alabama decided:

> "The court appeared not to have determined and the record does not indicate that these were such acts as would so seriously affect the peace or produce such unlawful consequences as to justify enjoining the picketing altogether. . . . The conduct of the picketers, of itself, appears not to have been unlawful and under our federal decisions, if such incidents as above described were merely isolated and episodic, not tending toward threatened violence, a breach of the peace, coercion, intimidation or other unlawful conditions, they did not taint the entire endeavor as unlawful nor permit the injunctive process to restrain all picketing." 30 So. (2nd) 696.

The court's holding in that respect is repugnant on its face because the picketing complained of not only tended towards threatened violence and coercion, but it was coercion in an extreme degree. Completely blocking the main

entrance of a cafe from time to time and telling everybody not to go in there and cutting off the service of supplies is coercion. *Ukranian Home* v. *Bartenders Union*, 19 Lab. Rel. Rep. 2242 (W. J. Ch. 1946); *Waterway Engineering Co.* v. *Olsen*, 20 Lab. Rel. Rep. 1013 (Wis ERB).

The union members who testified on the subject testified without dispute that the strike was called to force the Greenwoods to sign the proposed contract presented by Hacker and Hardwick, and the trial court so found (R. 67, 73). The Supreme Court of Alabama veneered that undisputed testimony in this fashion:

> "While the employees did speak loosely of striking because Greenwood would not sign, it is clear the strike was inaugurated because he would not then agree to anything."

wholly ignoring Greenwood's offer to negotiate and arbitrate as soon as he could obtain the assistance of his lawyer.

The respondents' excuse for the precipitate action was that Spiro Greenwood appeared to be working against the attempt to unionize the cafe. That claim was repudiated in toto by the trial court who saw and heard the witnesses testify. The trial court found no merit in the claim (R. 1, 2).

It appeared without dispute that Spiro Greenwood was informed of efforts to organize the cafe several days before Hacker had the red placards printed and made no objection (R. 136). The claim that Spiro Greenwood appeared to be working against the unionization of his cafe was based entirely on one incident, about which there is no dispute in the evidence. A waiter by the name of Sharpe, a long time employee, and a waitress, Mrs. Turner, both members of the union, in some way discovered that the proposed contract presented by Hacker and Hardwick, called for a six

day work week instead of seven days they were then working (R. 113, 121, 122).

This meant that they would lose one day's tips per week. Tips ran as high as $12.00 per day (R. 129). Mrs. Turner and Sharpe were unwilling to lose one day's tips per week so they decided to get up a petition and present it to the Greenwoods asking them not to commit the employees to a six day week. The Greenwoods had nothing to do with their idea of presenting such petition (R. 122).

Neither Sharpe nor Mrs. Turner could write very well, so they requested Spiro Greenwood to compose a petition for them (R. 114, 123, 142). Spiro Greenwood expresses himself rather poorly in English, being a naturalized citizen, formerly residing in Greece, and it is doubtful that his effort was any better than would have been an effort by Sharpe or Mrs. Turner. However, he composed a petition, on a small piece of scrap paper, so small that there was no space left for the signatures of the employees (R. 111). This scrap of paper was delivered to Sharpe who asked Mrs. Turner to have typed what Spiro Greenwood had composed. Mrs. Turner carried the paper to an office in the City, away from Greenwoods' place of business, and without any direction from them, express or implied and without their knowledge, and had Spiro Greenwood's composition typed across the top of a sheet of paper, leaving space for signatures (R. —). They signed the petition, and solicited and obtained the signatures of some of the other employees (R. 112).

The Supreme Court of Alabama did not overrule the finding of the trial court that there was no merit in the claim that Spiro Greenwood worked against the unionization of the cafe. It merely said that his conduct "tended to indicate certain anti-union activities" and that "the circumstances could have been so reasonably interpreted by the union people,"—although it was as plain as the noon-

day sun that only a prejudiced mind could impute any such intention to Spiro Greenwood.

Counsel for the Greenwoods returned to Birmingham Friday night, September 6th, and the next morning a conference was held between Arthur Greenwood, Hacker and the attorney, and Hacker was again assured that the Greenwoods would negotiate a contract with his union, or failing so to do would submit any matters of disagreement to arbitration, thus assuring the union of a contract if the pickets were withdrawn and the strike called off (R. 207). Hacker refused that offer and his attitude was made a matter of record by the sworn answer the respondents filed in the case in which it was stated.

> "that he (Hacker) would not be willing to submit any differences to arbitration" (R. 23).

When this second offer to give the union a contract was refused, the petitioners filed a bill of complaint in the Circuit Court of Jefferson County, Alabama, in Equity, on Saturday, September 7, 1946, praying for a mandatory injunction, commanding the respondents to call off the strike and a prohibitory injunction, enjoining picketing, and praying for a judgment against the respondents in the sum of Twenty-five Thousand Dollars to compensate petitioners for the damage sustained (R. 7).

It was alleged in the bill that the strike was illegal and unlawful and the maintenance of pickets illegal and unlawful because:

> (1) The strike was called and the pickets stationed without affording the petitioners a reasonable opportunity to negotiate a contract with the respondents, relating to wages, hours and working conditions of the employees of the petitioners.
>
> (2) The strike was called and the pickets stationed notwithstanding petitioners' repeated offer to nego-

tiate such a contract or to reach a contract through arbitration, in event the parties were unable to negotiate a contract.

(3) The strike was called and the pickets stationed before the respondents exhausted amicable methods of obtaining a contract with the complainants with respect to wages, hours and working conditions of the employees.

(4) The strike was called and pickets stationed in violation of the Constitution and By-Laws of the International Union (R. 11).

The temporary injunctions prayed for were issued and served on the respondents (R. 20).

The case came on for a hearing and the evidence was heard orally in open court. After an extended hearing in which a score or more witnesses were examined, many of whom were members of the union, the trial court found:

(a) The strike was called to force the Greenwoods to sign the proposed contract which was left with Spiro Greenwood on Wednesday morning, September 4, 1946.

(b) The Greenwoods were entitled to a reasonable opportunity to obtain the advice of their counsel and they were not afforded a reasonable opportunity to obtain that advice; that the calling of the strike about noon, Friday, September 6, 1946, implemented by a picket line for the purpose of coercing and compelling the Greenwoods to sign a contract without having a reasonable opportunity to consider the demands made on them, and to have advice of counsel about it, was illegal and that the picketing was illegal.

The court thereupon enjoined the strike and the picketing until such time as the union was willing to accord the Greenwoods a reasonable opportunity to consider the demands made on them and to negotiate a contract with the union.

The trial court declared that the union's refusal to enter into an arbitration agreement militated against the union's contention that it was acting in the best interest of the union.

(c) The trial court also found that the union had perpetrated a legal wrong on the Greenwoods that resulted in substantial injury and damage and the court awarded damages in the sum of $15,000.00 to compensate the Greenwoods for the injury and damage sustained (R. 5).

At every stage of the proceeding we urged that under the Constitution of the United States the Greenwoods had a constitutional right to contract; that implicit in that right was a right to have a reasonable time in which to consider the demands made on them; that right of collective bargaining imposed a legal duty on the union to afford the Greenwoods a reasonable time in which to consider the demands made on them and to obtain the advice of counsel with respect to such demands; that a strike called before the Greenwoods were accorded such time was unlawful and illegal; that a right to strike must, under the Constitution of the United States, be exercised with due regard to equal dignity, viz., the right to contract, and that that contrary holding abridges the privileges and immunities of the petitioners who are citizens of the United States.

The trial court upheld our contention in the main. We were unable to get the Supreme Court of Alabama to comment on those insistences further than to say that the union had an absolute right to strike; that it was not required to afford the Greenwoods a reasonable time in which to make an investigation and consider the demands made upon them and that the strike might be lawfully supported by picketing, and that petitioners were without remedy for the enormous loss sustained as a result of the strike and picketing. (30 So. (2d) 696.)

Statement as to Jurisdiction

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U. S. C. A., Sec. 344-B.

The decision of the Alabama Supreme Court was in favor of the absolute right to strike and in favor of the extension of that right to include the right of workers to enforce what they honestly conceive to be their just demands regarding wages, hours and working conditions whether the demands were actually just or not.

Every possible remedy within the State has been exhausted. The Federal questions were again urged on rehearing. The application for rehearing was overruled without comment.

Questions Presented

The following Federal questions, raised and argued before and expressly or impliedly passed upon by the Alabama Supreme Court, are involved in the present Petition for Certiorari and Review:

1. The decision of the Supreme Court of Alabama, in violation of the Fourteenth Amendment to the Constitution of the United States, deprives petitioners of their property without due process of law.

2. The decision of the Supreme Court of Alabama, in violation of the Fourteenth Amendment to the Constitution of the United States, denies to petitioners the equal protection of the law.

3. The decision of the Supreme Court of Alabama, in violation of the Constitution of the United States, impairs petitioners' right to contract.

4. The decision of the Supreme Court of Alabama, in violation of the Fourteenth Amendment to the Constitution

of the United States, abridges the privileges and immunities of petitioners who are citizens of the United States.

5. The decision of the Supreme Court of Alabama denies petitioners any remedy for the redress of an injury done them, and thereby deprives them of a vested right protected by the Fourteenth Amendment to the Constitution of the United States.

Reasons Relied On for Allowance of Writ

Issues of the utmost importance to small businessmen throughout the country are involved under this petition for review.

The Federal questions of substance and not heretofore determined by this Court, viz., that the decision of the Supreme Court of Alabama violates the Fourteenth Amendment of the Constitution of the United States, by depriving petitioners of their property without due process of law and denies them equal protection of the law and abridges their right to contract and their privileges and immunities as citizens of the United States, and deprives them of a vested right protected by the Fourteenth Amendment to the Constitution of the United States, was decided by the Supreme Court of Alabama in favor of the respondents by its holding granting the respondents complete immunity from any civil action for the injury inflicted upon the petitioners and by holding that the respondents could call a strike and wreck a business without affording the employer a reasonable opportunity to consider the demands made upon him, without liability therefor.

The said Supreme Court of Alabama in said case decided the aforesaid Federal questions of substance in favor of the respondents herein by its aforesaid holding, which decision is not in accord with the decisions of this Court, including the cases of *Dorchey* v. *Kansas,* 272 U. S. 306,

Truax v. *Corrigan*, 257 U. S. 312, and *Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673.

The Supreme Court of Alabama decided that although an employer was ready, willing and able to negotiate a contract with a union relating to wages, hours and working conditions of his employees as soon as he could obtain the advice and assistance of counsel, who was not available for two or three days, and although the employer was ready, willing and able to work out a contract with the union by arbitration if differences arose that could not be settled by negotiation, the union may, nevertheless, and without liability, peremptorily call a strike and wreck the business without affording the employer a reasonable opportunity to consider the demands made upon him or obtain the advice of counsel thereon.

The Supreme Court of Alabama decided that a union is under no legal obligation to give an employer a reasonable opportunity to consider a demand made on him and that the union may call a strike and establish pickets to enforce any demands its members honestly conceive to be just if it relates to wages, hours and working conditions, whether the demand is in truth and in fact just or not.

The opinion of the Supreme Court of Alabama is in conflict with applicable decisions of this Court relating to the questions involved, as more fully appears in the brief attached hereto.

Your petitioners present to this Court and file herewith a duly certified transcript of the entire record in the case as the same appears in the Supreme Court of Alabama.

Prayer

WHEREFORE, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Clerk of the Supreme Court of Alabama, commanding that Court to certify and send to this Court

for review and determination on a day certain to be named therein, a full and complete transcript of the record and all proceedings in the case numbered Sixth Division, No. 515, entitled Hotel & Restaurant Employees International Alliance and Bartenders International League of America, et als., Appellants vs. Arthur Greenwood, et als., Appellees, and that the judgment of the Supreme Court of Alabama may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just and meet; and your petitioners will ever pray.

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Birmingham 3, Alabama,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 402

ARTHUR GREENWOOD, ET ALS.,
Petitioners,

vs.

HOTEL & RESTAURANT EMPLOYEES INTERNATIONAL ALLIANCE AND BARTENDERS INTERNATIONAL LEAGUE OF AMERICA, ET ALS.,

---

BRIEF IN SUPPORT OF RESPONDENTS' PETITION FOR CERTIORARI

The Opinion of the Court Below

The opinion of the Supreme Court of Alabama is reported in 30 Southern (2d) 696, Adv. Sheets, application for rehearing denied by the Alabama Supreme Court on June 12, 1947. A copy of the opinion is printed in the transcript of the record 374.

Jurisdiction

The statement concerning jurisdiction is set forth in the petition and is incorporated herein by reference.

Statement of the Case

The statement of the case appears in the petition and is incorporated herein by reference. Such facts as are relevant are set forth in such statement and in the arguments that follow.

Specification of Errors

The Supreme Court of Alabama erred in the following respects:

1. In holding that the strike called on September 6, 1946, was a lawful strike.

2. In holding that the picketing enjoined was lawful picketing.

3. In holding that the union had a right to call a strike without giving petitioners a reasonable time in which to consider the demands made upon them.

4. In holding that the limit of judicial authority to restrain a strike without impairment of the freedom guaranteed by the Federal Constitution is to be determined by the lawfulness of the object aimed at and the manner in which the strike is conducted.

5. In holding that the Union had an absolute right to strike.

6. In holding that the strike was justified by alleged anti-union activities on the part of Spiro Greenwood.

7. In holding that the strike was precipitated as a combined result of the deferring tactics of Greenwood and the suspicion of the employees and the union representatives of losing their cause by further delay.

8. In holding that the picketing to implement the strike was legal.

9. In holding that the conduct of the picketers was not unlawful.

ARGUMENT

Proposition One

The decision of the Supreme Court of Alabama deprives petitioners of their property without due process and denies them equal protection of the law.

This case presents an unusual factual situation. This is the first time, so far as we have been able to find, that a labor organization in America called a strike against an employer who was ready and willing to undertake to negotiate a contract with the organization as soon as the employer could obtain the advice of his lawyer about a lengthy contract the organization proposed, and who was further willing to arbitrate any differences that arose and could not be settled by negotiation.

The decision of the Supreme Court of Alabama here sought to be reviewed does, *without the benefit of a statute*, what this Court said in *Truax* v. *Corrigan*, 257 U. S. 312, the Supreme Court of Arizona *could not do with the aid of a statute*, namely, the Supreme Court of Alabama granted the respondents complete immunity from all civil action for a wrong perpetrated on the petitioners by the respondents proximately resulting in substantial injury and damage.

The decision of the Alabama Court deprived the Greenwoods of their property without due process in violation of the Fourteenth Amendment by the holding that the unions might destroy their business, without liability therefor, because the Greenwoods would not sign the proposed contract on the day the union demanded its execution without

affording the Greenwoods a reasonable opportunity to consider its legal effect or to obtain the advice of counsel about it.

Section 13 of the Constitution of the State of Alabama of 1901 provides:

> "That every person, for any injury done him, in his lands, goods, person or reputation shall have a remedy by due process of law."

That vested right in a remedy for any injury done is protected by the Fourteenth Amendment against State action by the State judiciary.

> "The Federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government."
>
> *Brinkerhoff-Faris Co.* v. *Hill,* 281 U. S. 673.

The trial court found that the strike and picketing, which cut off the petitioners' supplies for a long time, damaged the Greenwoods in the sum of $15,000.00. The Supreme Court of Alabama did not find that they had not been damaged in that amount. That court simply said they were without remedy for the wrong done.

> "The right to carry on a business—be it called liberty or property—has value. To interfere with this right without just cause is unlawful."
>
> *Dorchey* v. *Kansas,* 272 U. S. 306.

> "The right to conduct one's business without the wrongful and injurious interference of others, is a valuable property right which will be protected, if necessary, by the injunctive process of equity."
>
> *Hardie-Tynes Manufacturing Company* v. *Cruse,* 189 Ala. 66, 66 So. 657.

While it is true that the Supreme Court of Alabama decided that

> "the strike was precipitated as the combined result of the deferring tactics of Greenwood, genuine though his purpose may have been, and the suspicion of the employees and the union representatives of losing their cause by further delay."

the record is nevertheless crystal clear, that the only "deferring tactics" of Greenwood appearing in the record are Spiro Greenwood's report to the union representatives on Friday that his attorney was in Mobile and was not expected back until Saturday plus the request for a conference on Monday between the Greenwoods, their lawyer, and the union, *so they could work out a contract;* the sole basis for any suspicion on the part of the employees or union representatives was the effort on the part of Mrs. Turner and Sharpe to avoid losing one day's tips each week.

If it be assumed that the foregoing statement of the Supreme Court of Alabama is conclusive here, which is not the case, (cf. *Brinkerhoff-Faris Co.* v. *Hill,* 281 U. S. 673, *Great Northern Ry. Co.* v. *Washington,* 300 U. S. 154), we nevertheless have a case in which the legality of the strike is sought to be justified by alleged "deferring tactics" which consisted solely of a request by the employers that they be given from Friday until Monday in which to be advised by counsel, and the suspicion of the employees and union representatives of losing their cause by further delay. If the request for time in which to obtain advice of counsel did not justify the strike, certainly *its legality cannot be predicated on suspicion alone.* The Supreme Court of Alabama did not even find that the employees and the union representatives had probable cause for believing that their cause would be jeopardized by a delay of two days. The most that the court said, and we think it stretched the

undisputed evidence a little when it said it, was, "the suspicion of the employees and the union representatives of losing their cause by further delay" was one of the causes of the strike. But assuming that to be true, such suspicion could not justify the rash disregard of Greenwood's assurance of a conference on Monday for the purpose of negotiating a contract and his further assurance that a contract would be obtained by arbitration—if not by negotiation.

A strike is a tort, a legal wrong, unless justified by law. The doing of an act manifestly likely to inflict temporal damage and inflicting it is actionable if done without just cause.

Truax v. *Corrigan,* 257 U. S. 312;
Teller on Labor Disputes, Vol. 1, Pages 188-189; Sec. 74.

It is for that reason that this Court decided that:

> "Neither the common law nor the Fourteenth Amendment confers the absolute right to strike."
> *Dorchey* v. *Kansas, Supra.*

The courts generally recognize that interference with the right to carry on a business without just cause being unlawful—

> "It is the general rule that the burden is on him who asserts the existence of just cause to prove it."
> *Cohn and Roth Electric Company* v. *Bricklayers Union,* 92 Conn. 161, 101 Atl. 659.

This Court has also recognized that:

> "A strike may be illegal because of its purpose, however orderly the manner in which it is conducted."
> *Dorchey* v. *Kansas, Supra.*

In the case last cited, it is decided that:

> "To collect a stale claim due to a fellow member of the union who was formerly employed in the business is not a permissible purpose."
> *Dorchey* v. *Kansas, Supra.*

In this case we respectfully insist that a strike to force the execution of a proposed contract which the employer did not have a reasonable opportunity of examining and with respect to which he has been unable to obtain the advice of counsel at that time, is not a permissible purpose.

In *Truax* v. *Corrigan,* 257 U. S. 309, it appears that the State of Arizona enacted a statute prohibiting the issuance of an injunction in any case between an employer and employee involving or growing out of a dispute concerning terms and conditions of employment, unless necessary to prevent irreparable injury, for which injury there was no adequate remedy at law. That statute also purported to legalize peaceful picketing. The Supreme Court of Arizona upheld the statute and held that the restaurant was without remedy for injury sustained by picketing. This Court said:

> "The effect of this ruling is that, under the statute, loss may be inflicted upon the plaintiffs' property and business by 'picketing' in any form if violence be not used, and that, because no violence was shown or claimed, the campaign carried on, as described in the complaint and exhibits, did not unlawfully invade complainants' rights."

The picketing in the case at bar was very similar to the picketing in the *Truax* case, with the exception that no handbills containing abusive epithets were distributed.

In commenting upon the Supreme Court of Arizona placing the stamp of legality on such conduct this Court said:

> "A law which operates to make lawful such a wrong as is described in plaintiffs' complaint deprives the owner of the business and the premises of his property without due process, and cannot be held valid under the Fourteenth Amendment."

The petitioners were ready to negotiate a contract with the unions as soon as they could obtain the advice and assistance of their lawyer. Being under the O.P.A. at the time

it would have been most imprudent for them to have attempted to negotiate a contract until they could obtain the advice of counsel about the legal effect of the contract and the attitude of the O.P.A. with respect to food prices. To show their entire good faith, Hacker and Hardwick were advised that the petitioners would negotiate with them in an effort to work out a contract, and, that if, for any reason, the parties could not agree on a contract, the matters on which they disagreed would be submitted to arbitration and a contract reached by that process. They were assured of that before the strike was called, before the temporary injunction was applied for and obtained and also while the strike was in process. Hacker and Hardwick rejected every suggestion of arbitration.

The Supreme Court of Alabama held that there was no duty on them to afford the Greenwoods reasonable time to consider the demands embodied in the contract or to arbitrate in event the parties could not agree upon a contract. We submit as applied to the facts of this case that ruling was erroneous.

The Greenwoods did not refuse to recognize the unions. They did not refuse to consider the demands made on them. The Greenwoods recognized the unions by assuring the representatives of the unions that the Greenwoods and the unions would get together on a contract, either by negotiation or as a result of arbitration, or both. They did not decline to enter into a contract with the unions. They only asked for two days' time in order to consider the demands made on them in order to decide whether they wanted to meet the demands or submit some or all of the demands to arbitration. They gave the unions' representatives every assurance that a contract would be consummated. In the

sworn answers filed by the respondents it is emphatically stated that:

> "He (Hacker) would not be willing to submit any differences to arbitration" (R. 23).

Thus we have a strike, called by a union that was unwilling to wait two days on negotiation, and unwilling to arbitrate anything if the negotiations resulted in a stalemate.

It is also important to have in mind that the strike was called to coerce the Greenwoods into signing a contract that called for the complete and abject surrender of their business to the unions.

The proposed contract consisted of a number of typewritten pages. There are 24 paragraphs and one or more provisions in each paragraph, and,

> "not a single provision in it saying what the employees shall do for the employer. It provides for the complete and abject surrender of the petitioners' business to the control of the unions and upon its execution the petitioners, whose capital is invested in the business, and whose capital and enterprise made possible the strikers' employment, would be reduced to a mere figurehead with practically no control of its own property and business."
>
> *Canter Sample Furniture House* v. *Retail Employees Local No. 109,* 196 Atl. 210.

As an illustration we refer to Section II of the proposed contract with the Greenwoods, which provides:

> "The official representative of the union shall have access to the property of the Employer during the regular business hours for the purpose of talking to employees on duty concerning union business."

The contract called for a closed shop, and by the provision above quoted, it made the employer not only furnish

a meeting place for the union but also furnish the members for a union meeting as long as the representative of the union decided that it was in the interest of the union to hold such meetings on the premises of the employer during regular business hours. There is no limit on the number of times per day that an official representative of the union might talk to employees on duty concerning union business.

With respect to this unusual provision in the proposed contract the Supreme Court of Alabama said:

> "A like construction of non-illegality is due Section II, permitting union officers to talk to union employees on the premises. This permission, though not specifically insisted on by the union, could, of course, be subject to abuse and, if so, subject them to judicial intervention, but it is clearly not illegal per se for one to come to a public place as a restaurant and talk business with one of the employees so long as it does not interfere with the business of the cafe or the rights of the parties involved."

The trouble with this attempted whitewash is that the proposed contract does not say anything about talking with one of the employees; it gives the union the right to talk *to all of them* on the employer's time, on the employer's premises and without regard to whether it interfered or not with the employer's business.

The Supreme Court of Alabama had no right to whitewash the proposed contract in order to rescue it from a condemnation of illegality. The language used in the proposed contract neither supports nor justifies the court's interpretation of that language. As for the observation that the union did not specifically insist on that section it is sufficient to say that it was the second article or provision in the contract, *and the union struck because the Greenwoods would not sign that contract* although the Greenwoods offered to negotiate and to arbitrate, if necessary, in

order to work out a satisfactory contract with the unions.

> "On behalf of the defendant, it is claimed that this form of contract was submitted as a basis only for negotiation; but it is significant that the complainant was told to sign within thirty-six hours or a strike would be called."
>
> *Canter Sample Furniture House* v. *Local 109, supra.*

In the case at bar the Greenwoods were told about 10:30 or 11 A. M., Friday morning, September 6, 1946, that they must sign the proposed contract then, or a strike would be called and one was called within an hour after they refused to sign. It is true that they had had the proposed contract in their possession from Wednesday until Friday, but they had been unable to obtain the advice of counsel with respect to its legal effect. It was not unreasonable for them to insist on their right to be advised by their lawyer about a document of this importance. The action of the Supreme Court of Alabama in upholding such arbitrary and uncalled for action, abridged the petitioners' constitutional right to contract and carry on a business, curtailed their liberty, and confiscated their property.

PROPOSITION TWO

The decision of the Supreme Court of Alabama, in violation of the Constitution of the United States, abridges and impairs petitioners' right to contract.

We ask the Court not to confuse the right of an individual, not otherwise contractually bound, to quit a job whenever the individual desires to do so for any reason or no reason, with the so-called right to strike.

The bill in this case was filed against the International Union, its Local No. 454 and a representative of the International and a representative of the Local. Not a single

employee of the Greenwood Cafe individually or by name was made a party defendant to the bill. The suit was against these quasi entities, and the alter ego of each. So far as the employees of the cafe are concerned their liberty to terminate their employment was not infringed in any way. The local was in trusteeship. It was run by the International through Hacker—not by its members. The court was asked to stay the hands of the alter ego of the local and international unions—the men who manage and control these organizations who have the power to influence, to initiate, to put on foot these strikes, and who have all the machinery in their hands and who seek to use it to induce and incite people to quit work.

Bonds v. *Berry,* 156 Fed. 72.

Liberty of contract is universally recognized and conceded to be within the protection of the Fourteenth Amendment and Fifth Amendment to the Constitution of the United States. In general it may be said that the privilege of contracting is both a liberty and a property right. Liberty of contract is also safeguarded by a constitutional guarantee of pursuit of happiness.

11 Am. Jur. p. 1154, Sec. 339.

16 C. J. S. p. 1167, Sec. 575.

Implicit in the right to contract is the right to have a reasonable time in which to consider the demands made. This is particularly true in labor cases where, as a matter of national policy, collective bargaining is encouraged, fostered and protected.

When a union approaches an employer for the purpose of negotiating a contract relating to the wages, hours, and working conditions of employees, the law implies that the employer will be afforded a reasonable opportunity to consider the demands of the union and to have the advice of counsel with respect to those demands. Otherwise we

would have been collective bludgeoning instead of collective bargaining.

The Greenwoods did not refuse to recognize the union, they did not refuse to consider the demands made on them, they did not decline to enter into a contract with the union. On the other hand, they gave every assurance that they would work out a contract with the union, either by negotiation or through arbitration, or as a result of both. They recognized the union by requesting a little time in which to obtain advice about the demands made. All they asked for was a little time, from Friday until Monday morning in which to obtain the advice of counsel on a twenty-four paragraph contract covering several typewritten pages and dealing with numerous matters relating to wages, hours and working conditions.

If the Supreme Court of Alabama is correct and the Greenwoods are without remedy, what becomes of the Greenwoods' right to contract under such circumstances?

We by no means assert that the liberty of contract is superior to any other constitutional right enjoyed by a citizen of the United States, but we do assert that it is of equal dignity and importance with the right of a union to call a strike and that each right must be exercised with due regard to the exercise of the other.

The trial court ruled that the union could not lawfully call a strike until they recognized the Greenwoods' right to contract and their right to have a reasonable opportunity to consider the subject matter of the contract. The Supreme Court of Alabama in reversing the trial ruled that the union could call a strike whenever it got ready.

We make no contention in this case that the employees of the Greenwood Cafe were contractually bound to serve for any specific period of time. They were therefore free to quit their employment at any time for any reason or no

reason, but the calling of a strike and the establishment of a picket line by the union was a horse of another color.

This Court said in *Dorchey* v. *Kansas*, 272 U. S. 306, that there was no absolute right to strike. The Supreme Court of Alabama said that the union could call a strike whenever it got ready. A mere reading of the opinion written by Mr. Justice Simpson for the Supreme Court of Alabama shows that he confused the right to strike with the right to quit a job and used the two terms interchangeably and treated them as synonymous.

There is a fundamental difference between the right to quit a job and the right to strike. Labor has consistently insisted that a worker on strike has not quit his job, that the relationship of employer and employee has not been severed, that the employee expects to return to the job in the future on more advantageous terms. For these reasons, and under certain circumstances, union members may engage in a work stoppage, called a strike, in order to coerce the employer into meeting a demand, and may advertise the reasons for the work stoppage by picketing.

This brings up for consideration and decision the right of a union to call a strike as distinguished from the right of an employee to quit his job.

An employee who severs the relationship of employer and employee immediately becomes a non-employee. As such he has no grievance with the employer. It is not permissible for him to picket and interrupt business in order to coerce the employer into meeting a demand that the non-employee is not interested in, any more than other outsiders. An outsider has no right to engage in concerted action to coerce the employer into agreeing to anything.

> "Not competition but social welfare is the fountain head of labor's claim to justification."
>
> *Teller on Labor Disputes*, Vol. 1, p. 195.

Does a labor organization owe an employer any duty when it demands a contract for its members? There can be but one answer to that question. The demanding organization owes the employer a duty to afford the employer a reasonable time to consider the demands made, and to obtain the advice of counsel, if desired, and if the organization violates that duty and calls a strike notwithstanding, the strike thus called is not justified in law and is therefore unlawful. The law does not sanction the unreasonable.

Truax v. *Corrigan, supra.*

It is repugnant to an elementary sense of justice to contend that a court has the power to legalize an effort on the part of a labor organization to force or coerce an employer to execute a contract without affording the employer a reasonable opportunity to consider the demands contained in the proposed contract and to be advised by counsel about them.

Why does the law require the employer to be afforded a reasonable opportunity for consideration and advice? Simply because any other rule would enable an organization to ruthlessly disregard the employer's right to contract.

Each party to a negotiation has a right to do something more than submit to the demands of the opposite party. Each party has a right to consider whether or not submission is in order, and to have a reasonable time in which to reach an intelligent decision. To take from an employer the right to consider, by saying the union may break him and destroy his business if he does not immediately submit to every demand made, is to take from him his right to contract in violation of the Constitution of the United States.

The Duty to Arbitrate

When a labor organization presents a demand, and is assured that the employer will negotiate, and follow nego-

tiation with arbitration, if negotiation results in a stalemate, is it lawful for a union to call a strike under such circumstances?

We affirm that it is not.

Very probably we will be accused of undertaking to get this Court to enact judicial legislation, and to put it in the power of every employer who is willing to submit differences to arbitration, to take from labor organizations the right to strike.

We are not terrified by the possibility of judicial lawmaking, nor do we subscribe to the Alabama Court's excuse for washing its hands of a perplexing question. Alabama has no Labor Relations Act, at least it has no legislation resembling the Wagner Act. In such circumstances only the court can say what the public welfare demands. And after all, that is the test.

In *Carpenters Union* v. *Ritter Cafe,* 315 U. S. 722, this Court took cognizance of its responsibility in the premises, saying:

> "The economic contest between employer and employee has never concerned merely the immediate disputants. The clash of such conflicting interests inevitably implicates the well-being of the community. Society has therefore been compelled to throw its weight into the contest. The law has undertaken to balance the effort of the employer to carry on his business free from the interference of others against the effort of labor to further its economic self-interest. And every intervention of government in the struggle has in some respect abridged the freedom of action of one or the other or both.
>
> "The task of mediating between these competing interests has, until recently, been left largely to judicial lawmaking and not to legislation. 'Courts were required, in the absence of legislation, to determine what the public welfare demanded;—whether it would not be best subserved by leaving the contestants free to

resort to any means not involving a breach of the peace or injury to tangible property; whether it was consistent with the public interest that the contestants should be permitted to invoke the aid of others not directly interested in the matter in controversy; and to what extent incidental injury to persons not parties to the controversy should be held justifiable."

The right to consider a proposed contract is as much a constitutional right as the right to contract itself. When a union proposes to strike in order to obtain a contract it must recognize the constitutional right of an employer to a reasonable time in which to consider the proposed demand before calling a strike. No organization has the right to strike unnecessarily. An unnecessary strike is a tort because it is not justified in law.

The placards carried by the pickets stated that one of the things the strike was called for was for union recognition. The Greenwoods recognized the union by asking for a conference on Monday for the purpose of working out a contract.

It must be remembered in this case that Local 454 was under trusteeship at the time the proposed contract was presented to the Greenwoods and that Hacker and Hardwick had full authority in the premises without submitting anything to a vote of the local.

Assuming that a union has a constitutional right to call a strike for a lawful purpose, the question of primary importance in this case is under what circumstances should a court of equity sanction the exercise of those rights?

We respectfully insist that when management offers to negotiate and further offers to arbitrate any differences that arise during the negotiation which the parties themselves are unable to adjust, that a union may not lawfully call a strike in advance of arbitration.

The reason for the rule is this: strikes are expensive. They are expensive to the union, to management and to

the public. Fidelity to the best interests of the union requires every labor leader to conserve the funds of his organization and to avoid unnecessary expense. Management certainly is under a duty to conserve its funds and avoid unnecessary expense. And the public, the innocent bystander so-to-speak, is certainly entitled to be spared a greater loss than both labor and management, if that is reasonably possible, consistent with due respect for the rights of the worker and the rights of management.

Our idea about this matter was forcibly expressed by Mr. Roger Babson, noted business statistician, in the press of Sunday, December 22, 1946, in the following language:

> "It is true that strikes are very costly—to labor, employers, and to the public. As a rule, it takes wage earners about 60 months to make up what is lost in wages in a 100-day strike which wins with an 18½ per cent increase. This means that a 30-day strike requires 20 months to catch up; and that with the average strike employees must work about two years at their average increased wages before they gain a penny.
>
> "The INNOCENT PUBLIC, which is largely made up of wage workers, also suffers, as consumers fear every strike. As production is reduced, prices must rise or hold up longer. The nation gets richer only by producing more. Strikes are the chief cause of 'oday's high prices. Strikes are chiefly to blame for inflation. The real difficulty is not with wage increases per se as this money quickly goes into circulation and there may be no loss to the nation as a whole from a reasonable wage increase of 10 per cent. But this is not true in the case of strikes.
>
> "Strikes mean a loss in production which may never be made up. Strikes mean a waste of time which can never be recovered. Lost production is more serious than lost money; while lost time is far more serious than the loss of both production and money. Hence, both labor and management commit a hideous crime against the nation when they permit a strike. Both are

traitors when they stop work and refuse fair arbitration."

It is not necessary for this Court to brand the Union as "traitors" when it refuses fair arbitration, and calls a strike.

There is nothing new about the idea of a union (and management) owing a duty to the public. The New York Court has expressed the idea this way:

> "Unions which authorize a strike and picketing are under a legal responsibility to the public not only to avail themselves of their lawful rights in a legal way, but also to endeavor to uphold all laws and to avoid destruction of property, disorderly conduct, personal assaults, breach of the peace, violence and fraud."
>
> *Busch Jewelry Co.* v. *Local 830,* 22 N. E. (2d) 320.

If the union owes such duty after the strike is called why does it not owe a duty to go as far as it reasonably can to avoid a strike? Fair arbitration is certainly not unreasonable. Why should the public be asked to endure mounting financial loss in order that management may be coerced into meeting the demands of labor or labor coerced into meeting the demands of management, when there is available to both a convenient, practicable, inexpensive way of adjusting their differences without burdening and punishing the public? Why should the members of the Union incur economic loss if it can be avoided? Why should management be forced to do the same? Why should the non-union, non-management, public that is larger than both management and the union combined, have to suffer for the sins of a small minority? If two methods are open, one expensive, the other inexpensive, one convenient, the other inconvenient, one burdensome, the other not burdensome, does not common sense and common honesty dictate that the lesser of the two evils be tried before recourse is had to the method

that promises loss for all and but little good, if any, to anyone?

A case that supports our position is *Samuel Hertzig Corporation* v. *Gibbs, et al.*, 3 N. E. (2d) 831. The theatrical stage employees union picketed a theatre after being called out on a strike to enforce their claim that they had been paid less than the wages required by their contract with the Entertainment Corporation. The Court said:

> "Even if the proprietor of the theatre was in the wrong, and ought to have paid larger wages to the members of the union, that does not enlarge the scope of the remedy by strike beyond the legitimate scope of that remedy in labor disputes in general. A simple remedy at law existed for the recovery of any unpaid balance of wages."

If a union may not lawfully strike to compel compliance with an existing contract, it may not lawfully strike to force the making of the contract, if the employer is willing to reach a contract by arbitration. A legal remedy for breach of contract prevents a resort to a strike in the first instance. It renders the strike unjustifiable in law. Arbitration has the same effect. It is an available legal remedy, which renders resort to a strike unnecessary and, therefore, unjustifiable. If a union may not lawfully call a strike to enforce the claim, then it should not be permitted to call a strike in order to obtain a basis for a claim. Certainly the right of the public to have a cafe operated, where the public may be served, takes precedence over any right of the union to engage in concerted action to force the employer to execute a proposed contract or close up shop.

In the January issue of *Everybody's Digest*, in an article entitled "Is Small Business Doomed," Benjamin J. Atlas writing, says:

> "A Dollar-Happy America is facing its strangest paradox. Bank deposits have never been bigger. The

average family income has never been higher. The demand for goods and services has never been greater. Peacetime production and employment are at a peak. And small business? The little fellows are folding at the rate of 400 or more a day. During 1946—a 'boom' year, 145,000 of them gave up the ghost."

"The small businessman is reeling under blows from several directions."

"Strikes have left him a sorrier victim than the packinghouse or railroad against which they were intended."

"Thirty per cent of all the independent eating places in America normally cannot afford to employ help outside the family. At least three-tenths of all the restaurants normally do less than $10,000 of business a year. Practically all of these are among the thirty per cent which shut down after less than a year's tryout."

"The small businessman himself, toughened by adversity is not yielding his vital place on the American scene without a furious battle. But he needs far stronger aid than he has been getting. And he needs it fast—for his sake and for the future of free America."

Here we have a plain case of a powerful international labor organization attempting to move in and take over a small business. It was even unwilling for the proprietors to have from Friday until Monday in which to be advised by their counsel how long they could stay in business if they agreed to the proposed contract. "Sign now" was the demand which the union undertook to enforce by intimidation, coercion and action *contrary to its own constitution.*

The Union Constitution

The Supreme Court of Alabama went to the extreme of holding that the union could call a strike contrary to its own constitution.

The union constitution specifically requires a secret ballot and a two-thirds vote in favor of a strike. The language of

the constitution of the union relating to strikes is found in Sec. 139, and paragraph (b) of that section provides:

> ". . . the question of a strike shall be submitted to a secret ballot vote of the entire membership of the Local. If necessary to reach the entire membership of the Local the ballot shall be taken by referendum, ballots being prepared and so distributed to give every member an opportunity to vote. It shall require a two-thirds majority vote in order to sanction a strike."
> Pages 46, 47 of the Constitution of the Union.

There is no claim that these provisions of the constitution of the international were complied with. The international had taken the local over under a so-called trusteeship and Hacker and Hardwick were running things with an iron hand.

The illuminating response of the Supreme Court of Alabama to this high-handed and ruthless conduct was:

> "It is finally argued the strike was not called in accordance with union regulations. If so, plaintiffs cannot claim equitable protection on such a premise."

This carte blanche authority to disregard its own constitution and to call a strike whenever it wanted to, without regard to the rights of the employer, for any cause the union organizer deemed just—whether it was in fact just or not—certainly finds no support in any decided case so far as we are able to find.

These quasi-entities and their alter ego are not exempt from the law. To argue that they may close out eating establishments at will, because picketing in some aspects may be identified with the freedom of speech, is ridiculous. If the major consequence of picketing is a hungry public, and information about a labor dispute only incidental, then in the public interest that form of speech at that place should be suppressed, just as the law refuses to tolerate a

cry of fire in a crowded theatre where there is no fire. The right to freely speak cannot be stretched to the point where it justifies closing the eating establishments in a large city. If one cafe may be closed by a union because it will not yield *instantly* to demands it has no reasonable opportunity to consider, then all may be closed for the same reason.

While this case was being litigated in the Court below, we were advised by the daily papers and the radio that a strike was in progress on the West Coast and every eating establishment in a large city was closed. Not one was open for several days to serve a hungry public. The framers of the Constitution never contemplated that a result of that kind could be associated with the right of free speech. It is more necessary that we eat than it is that we speak in front of an eating establishment. If our speaking in front of the establishment will prevent the public from being served, then it is better that we move on or employ some method of reaching the public other than parading up and down the street in front of the establishment advertising an effort to interfere with the public.

Eating establishments are just as essential as hospitals. It has been decided by the New York Court that a union has no right to call a strike against a hospital.

> "The right to strike has proven to be of such proper potency to labor in our industrial history that this Court would not curtail it in any respect except for the most impelling of reasons. But there are some contravening considerations which can be of even greater importance to the public interests as a whole. It is difficult to conceive of a public service of greater value than the maintenance of hospitals for the care of the sick and the injured. It is almost impossible to conceive of such hospitals functioning properly if they are subject to interference with their activities by strikes or otherwise. Obviously ministration to the sick cannot be delayed. Surgical operations as well

as the routine care of those requiring medical attention, must be permitted to proceed at all times. The effective strength of medicines and serums must be preserved continuously under scientific conditions. The frantic immediacy which is required for the treatment of emergency cases cannot be suspended while awaiting the outcome of parleys between the hospital management and its employees over terms of labor. These elements imperatively command that the generally broad right to strike be enjoined or otherwise limited in such cases.

"A strike by its employees which injuriously affects the essential functions of a hospital must therefore be held to be improper an idnimical to public interest. The public cannot brook any interference with the activities of an institution on which it relies for the treatment of the sick and hurt. A stoppage of electric current, a delay in deliveries of vital supplies, or any number of readily conceivable difficulties created by a strike might result in loss of life. The necessity of avoiding such tragic consequences to the public clearly outweighs the sound general policy favoring the protection of labor's right to strike."

Society of New York Hospital v. *Hanson*, 59 N. Y. S. (2d) 91.

The rule there announced was extended to picketing.

"The policy of this State, that the various statutes referring to labor disputes shall not apply to those employed by charitable, educational and religious associations or corporations and that their proper functions cannot be interfered with by strikes, because of the resultant chaotic effect upon the public health and welfare, has been enunciated in the cases of Matter of Trustees of Columbia University in City of New York *vs.* Herzog, 269 App. Div. 24, 53 N. Y. S. 2d 617, and Jewish Hospital of Brooklyn *vs.* John Doe, 252 App. Div. 581, 300 N. Y. S. 1111. Within this policy, in my opinion, is included *picketing and any other form of legal compulsion* normally acceptable or permitted in a dispute between an ordinary employer and employee. Even

peaceful picketing might well disrupt the mental agility or tend to increase the strain constantly imposed upon those persons whose vocations are directed to the curing of ills and the alleviation of pain."

Society of New York Hospital v. *Hanson*, 60 N. Y. S. (2d) 589.

This rule does not in any way affect the right of the employees in a Cafe to quit their employment, but when they do that, they have no right to undertake to thereafter interrupt the normal operation of the establishment.

We are endeavoring to outlaw force and coercion in the administration of international affairs and to substitute a rule of reason in their place. Our government is taking the position in international affairs that even force may be employed to compel differences between Nations to be adjusted in an equitable and fair manner, without punishing the world, and yet we are telling every Nation on earth by the way we are handling our labor relations, that differences between labor and capital in America must be settled by force and coercion; that the winner will be determined,—not by recourse to any question of equity and justice,—but by the ability of one to conquer the other. In other words, we say that the winner is the one that is most powerful, as long as the government remains on the side-line. The idea that the Unions' right to strike balances or offsets management's right to lockout, and that each is entitled to consideration and respect at the hands of a court of equity, to the exclusion of the rights of the public, is a complete negation of everything we are undertaking to accomplish in international relations.

The question may be asked: What right or interest of the public is involved in a labor dispute between the Greenwood Cafe and the Union or to state it another way what right of the public was violated by the Union in calling a strike against Greenwood's Cafe?

People v. *United Mine Workers of America,* 201 P. 54 and *State Ex Rel. Hopkins* v. *Howeat,* 109 Kans. 376, 25 A. L. R. 1210, indicate that the public has an interest in the production and transportation and distribution of coal and that a State has a right irrespective of the State's owner ship of the property affected and without the aid of statutory authority to avert a threatened public calamity by restraining a coal strike, which if called would prevent the carrying on of business and commerce and stop production, manufacture and transportation of the necessities of life.

The serving of food is an important matter. The public has a right to have eating houses operated to serve the public. A restaurant is frequently the only place where large numbers of people living in a large city may obtain a meal. Many cannot be accommodated in boardinghouses and do not have homes. These must eat at a restaurant or not eat at all. If any eating establishment can be closed by a Union then all can be closed. If one establishment may be closed additional burdens are thrown on the remaining establishments and the public is called upon to undergo additional serious inconvenience. The public has a right to eat. If the Union and the employer are unable to get together the members of the Union may quit their employment but the right of the public to eat is superior to the right of a Union to interrupt the normal operation of the business by concerted action for the purpose of coercing the employer into meeting Union demands. Men traveling to and from the Veterans' Hospital are entitled to eat without being subjected to the inconvenience of a labor controversy. The petitioners have a contract with the Veterans' Administration for feeding these men. The Marines stationed in Birmingham, a group that we look to for the protection of our safety and security, are entitled to eat without being compelled to run a picket line. The public is vitually interested in the continued operation of a business that is a source of

revenue. Health, education and other essential public services are dependent upon revenue. Only the most weighty consideration should sanction the denial or interruption of those rights of the public.

A strike may be in order in a case where the employer is unwilling to arbitrate, but that kind of a case is not before the court.

Arbitration—a peaceful and more or less informed method of settling differences—is encouraged by law and is definitely recognized by the statutes and courts of Alabama. What harm can come from requiring each side to resort to this well understood procedure rather than inconveniencing the public? In the law of homicide the court recognizes a constitutional right to kill in self-defense but the court conditions the exercise of that right on the killer retreating, even though retreat may be abhorent, if the killer can reasonably do so without increasing his peril. If we can require a killer to retreat before exercising his constitutional right to kill in self-defense, what obstacle is in the way of a court saying that both a Union and management must at least undertake to arbitrate before they can lawfully inflict grievous injury on the public by recourse to a strike or a lockout?

Attaching reasonable conditions to the exercise of a constitutional right is nothing new in this country. The rule of reason applies to most relations in life.

A court of equity does not need a statute to tell it that it is wrong and unlawful to cry "fire" in a crowded theatre where there is no fire, the constitutional right of freedom of speech to the contrary notwithstanding. Some things are inherently wrong and no amount of argument about consitutional rights can change their character. We submit it is inherently wrong for a Union to call a strike, to settle a difference that might be settled by arbitration, without first undertaking to spare the public the annoyance,

inconvenience and expense of a strike. The court may, with perfect propriety, recognize a right and at the same time recognize the impropriety of exercising that right at the particular time and place and under the circumstances.

We fell sure that the court will not overlook the fact that the union asserted that the strike was called for union recognition and that this was untrue. We submit that an employer should not be required to submit to a false and libelous statement and that a union should not be allowed to strike for union recognition when that was wholly unnecessary. It is wrong and unlawful to strike because it is claimed that an employer is unfair to labor when as a matter of fact he is not unfair to labor.

> *Wis. E. R. Board* v. *Milk Drivers Union,* 299 N. W., p. 31.

It has been said by reputable authority that:

> "Because it is an expensive weapon, the strike is generally labor's last resort in connection with industrial controversies."
>
> *Teller on Labor Disputes,* p. 236, Sec. 78.

The fact that a strike is generally labor's last resort in connection with industrial controversies would seem to support our proposition that there is a legal duty on a union to undertake to use all other reasonable, available means of adjusting differences before recourse is had to a strike. A union owes an obligation to its members and to the public to avoid the expense connected with a strike if that is reasonably possible. If the demands of a union are fair the presumption is they can be obtained by arbitration. If the demands are unfair, the union has no legal right to obtain them by coercion.

Strikes are almost entirely, if not exclusively, fomented and conducted by unions. Unorganized individuals rarely, if ever, strike. Inasmuch as unions assert the right to call

a strike how can they escape the imposition of reasonable conditions upon the exercise of the claimed right? Why should they be allowed to resort to an extraordinary, expensive procedure, when recourse to ordinary procedure might and probably would yield the union everything it is entitled to?

In other words, if two methods of adjusting a grievance are open to a union and one method is comparatively inexpensive and productive of no inconvenience or expense to the public, and the other method is very inconvenient and expensive to the public and to the employees involved, why should a court hesitate in holding that the inexpensive method must be used in preference to the expensive and inconvenient method?

The rule we suggest fully recognizes and respects the right of a worker to quit his job. If he is not satisfied with the award he may quit his job but no worker should be allowed to strike against a fair award. A strike is only appropriate in cases where the employer declines to arbitrate.

We have reached the point in this country where no court can tolerate the claim that labor and management must be allowed to be the exclusive judge of the method they will resort to for the settlement of their differences. National and international labor organizations wield as much or more power than combinations of capital. Both groups will ignore the rights of the public if allowed by the courts to do so. A court of equity called upon to pass upon the rights of the respective parties cannot afford to lose sight of the rights of the public.

The question of whether or not a strike is lawful or unlawful can never be satisfactorily solved by the legislative process. It must be solved by the judiciary because each tub stands on its own bottom. The right to call a strike depends on the circumstances in each case. If a strike is

called in advance of a reasonable opportunity to consider the demands made upon the employer, and notwithstanding an offer to arbitrate differences, if any develop,—it is unlawful. The purpose for which it was called or the manner in which it was conducted make no difference. The reason it is unlawful is because it wholly ignores the constitutional right of the employer to consider the demands made on him and to have the advice of counsel with respect to such demands and to resort to orderly, approved procedure for the settlement of differences without incurring the expense of a strike and inconveniencing the public, which has a vital interest in stable labor relations.

It is as much judicial lawmaking to decide that a labor organization owes no duty to arbitrate, as it is to decide that it owes a duty to arbitrate. A decision either way declares a rule of conduct. Either conclusion should be based on a rule of reason, and find root solely in the public welfare.

After all is said and done, it seems illogical to argue that a union may call a strike, and inconvenience the public to the limit, although that is wholly unnecessary to insure labor fair and just treatment in a particular instance. Unless this Court is prepared to declare that arbitration is a failure and will not insure labor fair and just treatment, then there is no excuse for an organization not arbitrating, where that procedure is agreeable to the employer.

We are unwilling to believe that this Court does not thoroughly appreciate that the public welfare demands more arbitration and fewer strikes.

If the lawmakers have not provided statutes that will bring about that result the responsibility on the court of declaring the law arising out of the facts is even greater. All of the law is not expressed in our statutes. When it comes to constitutional rights and duties the court needs

no statute to guide it. It is just as much in order for this Court to declare a duty, under the circumstances, to arbitrate, as it is for the court to declare a duty on the driver of a truck to use due care. A resort to arbitration is but the exercise of due care in the solution of differences between an employer and a union that cannot be ironed out by negotiations.

Respectfully submitted,

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